IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

OP.No. 12317 of 2001(N)

PETITIONER:

P.T.KUTTIMALU AMMA,
DAUGHTER OF LATE KANARAN NAIR,'
AND WIDOW OF GANGADHARA KURUP,
OTTILAYIL HOUSE, P.O. ERANHIPALAM,
CALICUT – 6.

BY ADV. SRI.P.V.KARUNAKARAN
SMT.PREETHY KARUNAKARAN
SRI.R.RAJESH KORMATH
SRI.ANISH S.AMBADY
SMT.BIJIMOL JOSE

RESPONDENTS:

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1. **THE INSPECTING ASSISTANT COMMISSIOINER, A.I.T. & S.T., KOZHIKODE.**

2. **THE APPELLATE ASSISTANT COMMISSIONER, A.I.T. & S.T., KOZHIKODE.**

3. **THE AGRICULTURAL INCOME TAX AND SALES TAX OFFICER, KOZHIKODE.**

4. **THE SUB TREASURY OFFICER, PUTHIYARA, KOZHIKODE – 4.**

5. **THE ACCOUNTANT GENENRAL, THIRUVANANTHAPURAM.**

BY ADV. SRI.H.SIVARAMAN, ADDL.CGSC
GOVT. PLEADER SRI.PRADEEP.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/11/2007, HE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.No.19717/2001 IN OP.NO.12317/2001-N.

DISMISSED.

19.11.2007. **Sd/- C.N.Ramachandran Nair, Judge.**

APPENDIX

PETITIONER'S EXHIBITS:-

P1: **Copy of the order dtd.28.9.1996 passed by the 3rd respondent, No.K.319/88-89.**

P2: **Copy of the refund order dtd.1.10.1996 issued by the third respondent to the petitioner.**

P3: **Copy of the order dtd.28.9.1996 issued by the third respondent, No.K.319/88-89.**

P4: **Copy of the objection dtd.7.10.1996 issued by the 4th respondent together with endorsement made by the 3rd respondent.**

P5: **Copy of objection dtd.8.10.1996 issued by the 4th respondent.**

P6: **Copy of the letter dtd.9.10.1996 issued by the 3rd respondent to the petitioner, No.K.319/88-89.**

P7: **Copy of the letter dtd.25.11.1997 issued by the 3rd respondent to the first respondent, with copy to the petitioner No.K.319/88-89.**

RESPONDENTS' EXHIBITS:- **Nil.**

(true copy)

P.S. TO JUDGE.

kvs/-

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 12317 OF 2001

Dated this the 19th day of November, 2007

JUDGMENT

This O.P. is filed for direction to respondents to make payment based on Ext.P2 refund voucher granting refund of Rs. 22,508/- being excess agricultural income tax paid by the petitioner. According to the petitioner, Rs. 40,000/- was paid in recovery proceedings before the Village Officer, who in turn remitted to the Agrl. Income-tax Officer. However, refund voucher is not encashed only because payment is not accounted in the correct head of account. I do not think petitioner can be denied the benefit of refund because of the mistake committed by the revenue authorities while remitting the recovered amount. Admittedly petitioner paid cash to the Village Officer who in turn remitted it to the Treasury. It was the duty of the revenue authorities to remit the amount in the correct head of account to reach the requisitioning authority who is the Agrl. Income-tax Officer. It is clear from Ext.P1 that the Assessing Officer has got the payment and that is why he treated the tax as fully paid and granted refund. When the

amount was already credited in the correct account of the concerned Department, I see no reason why petitioner should be declined refund. In fact the argument of respondents that payment is not in the correct head of account also does not appear to be correct because without remittances in the correct head of account, credit would not have gone towards AIT for the relevant year. When such credit is already given, it is only a matter of granting refund based on assessing officer's order. In the circumstances, I dispose of the O.P. with direction to the third respondent to issue fresh refund voucher and respondents 4 and 5 to release the payment to the petitioner within three months from the date of production of a copy of this judgment by the petitioner.

(C.N. RAMACHANDRAN NAIR)
Judge